

BUREAU OF LAW  
MEMORANDUM*Copy to Determination*  
*A-2*  
*Clinton Service and Storage Corp.*

TO: Commissioners Murphy, Macduff and Conlon

FROM: E. H. Best, Counsel

SUBJECT: Clinton Service and Storage Corp.  
Application for revision of franchise  
tax assessed under Article 9-A of the  
Tax Law for the calendar year ended  
December 31, 1963

An assessment of additional franchise tax in the amount of \$112.05 was issued for the calendar year ending December 31, 1963 based upon a disallowance of a net operating loss deduction sustained during the calendar year 1961.

The facts herein, more specifically set forth in the determination, disclosed that Clinton Service and Storage Corp., the taxpayer, had filed reports as a real estate corporation under section 182 of Article 9 of the Tax Law for years prior to and including the year 1960. On March 1, 1962 the taxpayer filed the interim report required by section 209, subdivision 1-a of the Tax Law which section imposed the interim tax on all corporations which had been taxable as real estate corporations for the privilege year 1961, and which commencing with the privilege calendar year of 1962 became taxable under section 209, subdivision 1, Article 9-A of the Tax Law.

Section 208, subdivision 9, paragraph (f) provides that a net operating loss deduction shall not include any net operating loss sustained during any taxable year in which the taxpayer was not subject to the tax imposed by Article 9-A of the Tax Law. Since the net operating loss was sustained while the taxpayer was taxable under section 182 of Article 9 as a real estate corporation such loss for the year 1961 was disallowed. The taxpayer argues that since the taxpayer was taxed under section 209, subdivision 1-a for the year 1961 and since such section is part of Article 9-A of the Tax Law the taxpayer was subject to a tax imposed by Article 9-A. However, the tax imposed under section 209, subdivision 1-a is an additional tax on real estate corporations for the taxable period beginning January 1, 1962. The provisions of section 209, subdivision 1 and section 209, subdivision 1-a make it clear that the tax under this article is the tax imposed by section 209, subdivision 1 upon corporations doing business in this State.

A proposed determination has therefore been prepared sustaining the assessment on the ground that the net operating loss for the year 1961 was properly disallowed. If you agree, kindly sign one original and three copies of the proposed determination and return the same to the Law Bureau for further processing.

MS:kon  
April 14, 1967

Counsel

STATE OF NEW YORK  
STATE TAX COMMISSION

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IN THE MATTER OF THE APPLICATION  
OF  
CLINTON SERVICE AND STORAGE CORP.  
FOR REVISION OF FRANCHISE TAX ASSESSED  
UNDER ARTICLE 9-A OF THE TAX LAW FOR THE  
CALENDAR YEAR ENDED DECEMBER 31, 1963  
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Clinton Service and Storage Corp., the taxpayer herein, having filed an application for revision of franchise tax assessed under Article 9-A of the Tax Law for the calendar year ended December 31, 1963 and a Stipulation of Facts having been entered into between the taxpayer and the State Tax Commission, which Stipulation of Facts is hereto attached and made part of the record and a hearing having been waived and the matter having been considered on the record,

The State Tax Commission hereby finds:

(1) Clinton Service and Storage Corp., had filed reports of franchise tax on gross assets and dividends for the years ended December 31, 1958, December 31, 1959 and December 31, 1960. Such reports were filed by Clinton Service and Storage Corp. pursuant to the provisions of section 182, Article 9 of the Tax Law, which section deals with the filing of reports and the payment of franchise taxes by corporations engaged in the business of real estate.

(2) On March 1, 1962 Clinton Service and Storage Corp. filed a report of franchise tax on dividends and net worth based on the calendar year ended December 31, 1961, showing on such report a net loss sustained during that calendar year in the amount of \$2,037.34. Such report was filed pursuant to the

provisions of section 209, subdivision 1-a of the Tax Law which imposes a franchise tax for the period beginning January 1, 1962 on every corporation heretofore taxable for the privilege year 1961 under section 182 of the Tax Law.

(3) On March 15, 1963 Clinton Service and Storage Corp. filed a franchise tax report under Article 9-A of the Tax Law for the calendar year 1962 showing a New York net operating loss of \$903.29.

(4) On March 15, 1964 Clinton Service and Storage Corp. filed a corporation franchise tax report under Article 9-A of the Tax Law based on the calendar year 1963 and deducted from the Federal taxable income reported thereon the loss of \$903.29 sustained in the calendar year 1962 as set forth in the statement of fact No. 3 and a net operating loss for the calendar year 1961 in the amount of \$2,037.34 as set forth in the statement of fact No. 2.

(5) On November 6, 1964 an assessment of franchise tax under Article 9-A of the New York State Tax Law was issued against Clinton Service and Storage Corp. with respect to the calendar year beginning January 1, 1963 and ended December 31, 1963 in the amount of \$112.05 as the balance due and owing for such year. The assessment was based solely upon the disallowance of the amount of \$2,037.34, the net operating loss sustained during the calendar year 1961. The net operating loss sustained during the calendar year 1962 was allowed as a proper deduction.

(6) Section 209, subdivision 1 of the Tax Law provides as follows:

"For the privilege of exercising its franchise or doing business in this state in a corporate or organized capacity for all or any part of each of its fiscal or calendar years, except in the case of any corporation heretofore taxable for the privilege calendar year nineteen hundred sixty-one under section one hundred eighty-two of this chapter . . . for all or any part of the period beginning January first, nineteen hundred

sixty-two, and extending through any subsequent part of its fiscal or calendar year ending after said date and for all or any part of each succeeding fiscal or calendar year, . . . shall annually pay a franchise tax, . . . ." (Emphasis supplied)

(7) Section 209, subdivision 1-a of the Tax Law provides:

"For the privilege of exercising its franchise or doing business in this state in a corporate or organized capacity for all or any part of the period beginning January first, nineteen hundred sixty-two and extending through any subsequent part of its first fiscal or calendar year ending after said date, every corporation heretofore taxable for the privilege year nineteen hundred sixty-one under section one hundred eighty-two of this chapter . . . shall be subject to and pay a franchise tax (which shall be in addition to any and all other taxes imposed by this chapter or any other law) . . . ." (Emphasis supplied)

(8) Section 208, subdivision 9, paragraph (f) provides that:

"A net operating loss deduction shall be allowed which shall be presumably the same as the net operating loss deduction allowed under section one hundred seventy-two of the internal revenue code of nineteen hundred fifty-four, or which would have been allowed if the taxpayer had not made an election under subchapter s of chapter one of the internal revenue code, except that . . . (2) such deduction shall not include any net operating loss sustained . . . during any taxable year in which the taxpayer was not subject to the tax imposed by this article, . . . ."

(Emphasis supplied)

Based upon the foregoing findings, it is hereby  
DETERMINED:

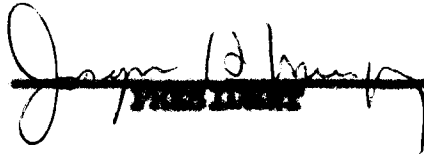
(A) That for the privilege year 1961 the taxpayer was taxable under section 182 of Article 9 of the Tax Law; that the taxpayer did not become subject to the franchise tax imposed on business corporations pursuant to section 209, subdivision 1 of Article 9-A of the Tax Law until the privilege calendar year commencing January 1, 1962.

(B) That the State Tax Commission therefore properly disallowed as a deduction the net operating loss sustained in the calendar year 1961 in the amount of \$2,037.34.

(C) That accordingly the tax and penalty as shown in finding of fact No. 5 are affirmed as assessed and that said taxes do not include any taxes or other charge which are not lawfully due and owing.

Dated: Albany, New York this 1st day of May, 1967.

**STATE TAX COMMISSION**

  
**PRESIDENT**

/s/

**JAMES R. MACDUFF**

**COMMISSIONER**

  
**COMMISSIONER**